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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEWART ALAN FREY, VITALIY VAYSBERG,
FRANCIS HENRY DILLON IV, and
MATTHEW JOSEPH WOOD

Appeal 2019-002470
Application 15/786,121
Technology Center 2400

Before DANIEL J. GALLIGAN, JESSICA C. KAISER, and
DAVID J. CUTITTA II, *Administrative Patent Judges*.

CUTITTA, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Pursuant to 35 U.S.C. § 134(a), Appellant¹ appeals from the Examiner's decision to reject claims 26–44.² We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE and enter a NEW GROUND OF REJECTION UNDER 37 C.F.R. § 41.50(B).

¹ We use the word Appellant to refer to “applicant” as defined in 37 C.F.R. § 1.42(a). Appellant identifies the real party in interest as Viacom International Inc. Appeal Br. 2.

² Claims 1–25 have been cancelled. Appeal Br. 7.

CLAIMED SUBJECT MATTER

According to Appellant, the claims are directed to a computer system that receives a request for packaged media to be delivered, where the request for packaged media specifies aspects detailing how the media should be packaged.³ Spec. ¶ 33; Abstract. Claim 26, reproduced below, is illustrative of the claimed subject matter:

26. A computer-implemented method of packaging media files comprising:

transmitting, by a client device, a request from a user to a media packaging server, the request including a packaging template and a media asset ID identifying a media file requested by the user of the client device, the packaging template identifying user-requested metadata associated with the media asset ID and a user-requested format for the media file and metadata requested by the user of the client device;

receiving, by the client device, a delivery package from the media packaging server, the delivery package including a media file and metadata matching the media asset ID and metadata in the request in the format indicated in the packaging template; and

extracting, by the client device, the media file and metadata from the delivery package based upon the format indicated in the packaging template.

Appeal Br. 10 (Claims Appendix).

³ This Decision refers to: (1) Appellant's Specification filed October 17, 2017 ("Spec."); (2) the Final Office Action ("Final Act.") mailed August 24, 2018; (3) the Advisory Action ("Adv. Act.") mailed October 30, 2018; (4) the Appeal Brief ("Appeal Br.") filed December 5, 2018; (5) the Examiner's Answer ("Ans.") mailed January 24, 2019; and (6) the Reply Brief ("Reply Br.") filed February 1, 2019.

REFERENCE AND REJECTIONS

The Examiner rejects claims 26–33, 35, 37–41, and 43 under 35 U.S.C. § 102(e) as being anticipated by Reza (US 8,903,895 B2, issued Dec. 2, 2014). Final Act. 3–6.

The Examiner rejects claims 34, 36, 42, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Reza. *Id.* at 6–7.

Our review in this appeal is limited to the above rejections and the issues raised by Appellant. Arguments not made are waived. *See* MPEP § 1205.02 9th Ed., Rev. 08.2017, Jan. 2018; 37 C.F.R. § 41.37(c)(1)(iv) (2017).

OPINION

Appellant argues the Examiner erred in finding Reza discloses a “packaging template identifying user-requested metadata associated with the media asset ID and a user-requested format for the media file and metadata requested by the user of the client device,” as recited in claim 26 and similarly recited in claim 37. Appeal Br. 3–7; Reply Br. 2–4. Specifically, Appellant argues “[i]n Reza, the user provides only a request for media with no metadata request.” Appeal Br. 4. Appellant further argues the “user in Reza is unable to specify a format.” Reply Br. 3; Appeal Br. 4. According to Appellant, “Reza discloses only that the media attributes included in the request may include a selection of a preferred spoken language or a preferred subtitle language,” but “Reza does not disclose or suggest that the preferred language selection is a user input.” Appeal Br. 5.

We determine that the Examiner has not sufficiently shown that Reza discloses a packaging template identifying “user-requested metadata” and “a user-requested format.” The Examiner finds (*see* Final Act. 2–3) that Reza’s

client machine attributes (“client MATs”) identify “frames per second, spoken language, optimized screen size, encoding rate (audio, video), codec used,” and subtitles (Reza 7:11–14, 32–33; *see id.* 8:27–29), and, so, disclose “metadata” and “format” information. Although we agree with, and Appellant does not contest (*see* Appeal Br. 3–8), the Examiner’s finding that Reza discloses metadata and format information, the Examiner has not sufficiently demonstrated that the metadata and format information in Reza is “user-requested,” as recited in the claims. While the Examiner points out (Ans. 3–4; Adv. Act. 2; Final Act. 2) that Reza describes that client MATs “comprise preferred media attributes,” e.g., “a preferred language, and a preference for the display of subtitles” (Reza 7:25–34), the Examiner has not identified where Reza describes that those preferred media attributes are necessarily “user-requested” or adequately explained why Reza’s preferences must somehow be “user-requested.”

Accordingly, we are persuaded that the Examiner erred in finding Reza discloses a “packaging template identifying user-requested metadata associated with the media asset ID and a user-requested format for the media file and metadata requested by the user of the client device,” as recited in claim 26 and similarly recited in claim 37. Therefore, we do not sustain the Examiner’s rejection of claims 26 and 37 under 35 U.S.C. § 102(e).

We also do not sustain the rejections of dependent claims 27–36 and 38–44. Therefore, we reverse the Examiner’s decision to reject claims 26–33, 35, 37–41, and 43 under 35 U.S.C. § 102(e) as being anticipated by Reza. Moreover, the Examiner has not sufficiently shown how the obviousness rejection of claims 34, 36, 42, and 44 cures the deficiency noted above for claim 1. Final Act. 7–8. Accordingly, we do not sustain the

Examiner's decision to reject claims 34, 36, 42, and 44 under 35 U.S.C. § 103(a) as being unpatentable over Reza for the reasons set forth above for claim 1.

NEW GROUND OF REJECTION

Pursuant to our authority under 37 C.F.R. § 41.50(b), we enter a new ground of rejection of independent claims 26 and 37 under 35 U.S.C. § 103(a) over Reza. We agree with, and adopt, the Examiner's findings that Reza discloses

transmitting, by a client device, a request from a user to a media packaging server, the request including a packaging template and a media asset ID identifying a media file requested by the user of the client device . . .

receiving, by the client device, a delivery package from the media packaging server, the delivery package including a media file and metadata matching the media asset ID and metadata in the request in the format indicated in the packaging template; and

extracting, by the client device, the media file and metadata from the delivery package based upon the format indicated in the packaging template

as recited in claim 26 and similarly recited in claim 37. Final Act. 3–4 (citing Reza 6:60–8:13, 8:30–47). Furthermore, although Reza does not expressly disclose a “packaging template identifying user-requested metadata associated with the media asset ID and a user-requested format for the media file and metadata requested by the user of the client device,” for the reasons discussed above, we conclude that identifying “user-requested metadata” and “user-requested format” information would have been obvious to an ordinarily skilled artisan in view of Reza's disclosure.

As noted above, Reza describes that identified client MATs include “preferred media attributes,” e.g., “a preferred language, and a preference for the display of subtitles.” Reza 7:25–34. Reza also describes “allowing a user to select a media content item from the list” (*id.* at 3:23–25) and “receiving input from a user, the input selecting a media content item” (*id.* at 17:59). Reza further details that the user’s selection of media and input are provided via a user interface. *Id.* at 17:59–60, 20:2–4; *see id.* at 3:23–35, 8:24–25.

It would have been obvious to a person of ordinary skill to use Reza’s user interface in order to further allow a user to select his or her preferred media attributes, e.g., a preferred language or a preference for the display of subtitles. Doing so would have improved Reza’s system because a user would be able to select media attributes and customize media based on the user’s preferences. For example, if a user prefers to watch a media selection in a particular language or with subtitles, the user may customize that preference for that media selection. *See id.* at 7:25–34. In another example, a user may prefer to receive media with different resolutions, video bit-rates, audio or video encoding (*see id.* at 7:12–18, 8:48–56), choosing between higher-quality media requiring greater computational resources or lower-quality media requiring fewer computational resources. Allowing the user to select his or her preferences gives the user greater control over the delivery of requested media.

Further, because Reza describes “a user interface for interacting with [a] user” (*id.* at 6:21–23) that allows a user to select and request media content from a list (*id.* at 17:59–60, 20:2–4; *see id.* at 3:23–35, 8:24–25), the resulting combination, which further allows the user to select and request

media attribute preferences, would have been predictable to a person of ordinary skill in the art. Extending a selection interface to allow a user to select additional preferences — specifically, attributes pertaining to a user-requested media file — is a simple extension of Reza’s selection interface, which already provides user requests.

Accordingly, we determine that it would have been obvious for a “packaging template” to “identify[] user-requested metadata associated with the media asset ID and a user-requested format for the media file and metadata requested by the user of the client device.” As such, we conclude that claims 26 and 37 would have been obvious over Reza.

The Patent Trial and Appeal Board is a review body, rather than a place of initial examination. We have made a new rejection of independent claims 26 and 37 under 35 U.S.C. § 103(a), pursuant to 37 C.F.R. § 41.50(b). However, we have not reviewed the remaining claims to the extent necessary to determine whether these claims are unpatentable over Reza and/or other prior art.

We do, however, note that Appellant has challenged the Examiner’s Official Notice regarding the obviousness rejection of claims 34, 36, 42, and 44. Appeal Br. 7–8; Reply Br. 5–6. The Examiner relies on Official Notice to teach “including, by the client device, a user-requested compression format for compressing the delivery package” and “including, by the client device, a user-requested encryption format for encrypting the delivery package.” Final Act. 6–7. We note that the references the Examiner relies on in support of Official Notice (Final Act. 2; Ans. 5–6), i.e., US 7,395,261 B1; issued July 1, 2008 (“Atzel”) and US 2007/0288967 A1; published December 13, 2007 (“Candelore”), themselves teach the limitations recited

in claims 34, 36, 42, and 44. As such, those references may, on their own, be relied upon to teach those limitations and further may be combined with Reza, given adequate rationale for the combination. We leave it to the Examiner to ascertain the appropriateness of any further rejections based on these or other references.

Our decision not to enter a new ground of rejection for all claims should not be considered as an indication regarding the appropriateness of further rejections or allowance of the non-rejected claims. *See* MPEP § 1213.03.

CONCLUSION

In summary:

Claims Rejected	35 U.S.C. §	Reference(s)/Basis	Affirmed	Reversed	New Ground
26–33, 35, 37–41, 43	102	Reza		26–33, 35, 37–41, 43	
34, 36, 42, 44	103	Reza		34, 36, 42, 44	
	103	Reza			26, 37
Overall Outcome					

TIME PERIOD FOR RESPONSE

This decision contains a new ground of rejection pursuant to 37 C.F.R. § 41.50(b). 37 C.F.R. § 41.50(b) provides “[a] new ground of rejection pursuant to this paragraph shall not be considered final for judicial review.”

37 C.F.R. § 41.50(b) also provides that the Appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

(1) *Reopen prosecution*. Submit an appropriate amendment of the claims so rejected or new Evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) *Request rehearing*. Request that the proceeding be reheard under § 41.52 by the Board upon the same Record. . . .

Further guidance on responding to a new ground of rejection can be found in the Manual of Patent Examining Procedure § 1214.01.

REVERSED;
37 C.F.R. § 41.50(B)